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March 23, 2011

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BY E-File

Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: STB Docket No. AB 6 (Sub-No. 473X), BNSF Railway Company --
Abandonment Exemption -- In Rolette and Towner Counties, N.D.

Dear Ms. Brown:

BNSF Railway Company ("BNSF") hereby replies in opposition to the stay request filed by Rolla Job Development Authority ("RJDA") with the Surface Transportation Board ("Board") on March 21, 2011 ("Stay Request"). Pursuant to the Board's decision in this proceeding served January 12, 2011, petitions to stay were due on January 24, 2011. Thus, the Stay Request is very untimely. Moreover, the exemption in this proceeding became effective on February 11, 2011, thus, mooted the Stay Request. The Board cannot stay the effective date of its decisions once they have become effective.

The Stay Petition lacks merit as well as being untimely and moot. The standards governing disposition of a request for stay are: (1) that there is a strong likelihood that the movant will prevail on the merits; (2) that the movant will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed; and (4) that the public interest supports the granting of the stay. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958). It is the movant's obligation to justify the exercise of such an extraordinary remedy, *Cuomo v. United States Nuclear Regulatory Comm.*, 772 F.2d 972, 978 (D.C. Cir. 1985), and the movant carries the burden of persuasion on each of the four elements required for the extraordinary relief. *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974).

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RJDA fails to mention, much less meet, the criteria for granting a stay. RJDA's sole justification for the Stay Request is that it needs more time to pursue the purchase of the line. The governing statute, 49 U.S.C. § 10904(c), sets forth strict deadlines for the filing of offers of financial assistance ("OFA") which RJDA has failed to meet. Since RJDA has failed to provide any justification for its delay, RJDA cannot possibly prevail on the merits. Nor has RJDA demonstrated that it will be irreparably harmed in the absence of a stay. RJDA has also failed to show that BNSF would not be harmed by granting the Stay Request. A stay would delay unnecessarily BNSF's ability to dispose of the line's assets and harm BNSF by foreclosing it from using assets from this line elsewhere. In addition, RJDA has failed to demonstrate that the public interest supports delaying the abandonment of a rail line that has had no traffic in four years.

The U.S. Fish and Wildlife Service ("USFWS") recommended that BNSF salvage the line as soon as possible to protect certain migratory birds. BNSF, therefore, has put out for bid the salvaging of the line and hopes to complete the salvage operation as soon as possible to comply with USFWS's recommendation.

BNSF sympathizes with RJDA's desire to preserve rail service on the line and will entertain any reasonable offer by RJDA to acquire the line outside of the OFA process. RJDA, however, must make such an offer before the salvage operations commence.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Morell", written in a cursive style.

Karl Morell
Attorney for BNSF Railway Company

cc: All parties of record